IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2735 OF 2004

Office Notes, Office Memoranda of : coram, appearances, Court's Orders: or directions and Registrar Orders:	Court's or Judge's orders

Mr.S.R. Nargolkar for the Petitioner.

Mr.Satpute for Respondent No.1.

CORAM : H.L. GOKHALE &
MRS. R.S. DALVI, JJ.

DATE : 27TH JUNE 2005

P.C. :

1. Heard Mr.Nargolkar in support of this petition. Mr.Satpute appears for Respondent No.1 Bank.

2. The grievance in the petition is that action is being taken against the flat owned by the Petitioner for non-payment of the loan taken by his sister-in-law. Respondent No.2 herein. The concerned flat is in joint name of both of them though it is the case of the Petitioner that he had taken only a small assistance from Respondent No.2

and that amount has been repaid to Respondent No.2. The fact however remains that the flat is in the joint name of the Petitioner and Respondent No.2 and the Recovery Officer has attached it for recovering the amount due to the 1st Respondent Bank.

3. Mr.Nargolkar submits that section 44 of the Transfer of Property Act will prohibit any such action as has been taken. Mr. Satpute for Respondent No.1 however points out that there is a remedy available under section 30 of the Recovery of Debts due to the Banks Act, 1993 in the shape of an appeal to the Recovery Tribunal. That appeal is to be filed within 30 days. Inasmuch as the Petitioner had taken resort to the present proceeding, we direct that in the event this appeal is filed within 30 days hereafter, the question of limitation will not be raised. Mr.Satpute further makes a statement that in the event any such appeal is filed, the Bank will not insist on any pre-deposit from the

Petitioner.

4. Petition stands disposed of. Interim relief granted against the auction will continue for this period of 30 days.

(H.L. GOKHALE, J.)

(MRS. R.S. DALVI, J.)